



August 11, 1999

Mr. David Wofford
Staff Attorney
Texas Youth Commission
4900 North Lamar
Austin, Texas 78765

OR99-2290

Dear Mr. Wofford:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126402.

The Texas Youth Commission (the "TYC") received a request for records that pertain to a youth who died while in the custody of TYC. The requestor represents the family of the deceased child. You contend that the records at issue are protected from disclosure under sections 58.005 and 261.201 of the Family Code, in conjunction with section 552.101 of the Government Code. Section 552.101 of the Government Code provides an exception to disclosure of information that is made confidential by law. You also assert that the records are protected from disclosure under section 552.103 of the Government Code.

Section 58.005 of the Family Code concerns release of information "obtained for the purpose of diagnosis, examination, evaluation or treatment or for making a referral for treatment of a child" by the agency providing supervision of a child or having custody of a child under order of a juvenile court. Fam. Code § 58.005(a). Subsection (a) of section 261.201 of the Family Code provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with . . . [the Family] code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under . . . chapter [261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under . . . chapter [261 of the Family Code] or in providing services as a result of an investigation.

Based upon the information provided to this office, we believe that section 261.201 of the Family Code, in conjunction with section 552.101 of the Government Code, is applicable to the records at issue rather than section 58.005. We also note that because section 261.201 of the Family Code governs access to the records at issue, section 552.103 is inapplicable. *See* Open Records Decision 598 (1991) (section 552.103 inapplicable when access to information governed by provisions outside chapter 552).

Pursuant to section 261.201, the records at issue are confidential and may not be disclosed except as provided by rules of the investigating agency.¹ TYC thus may release records only as provided by applicable rules.² *See* Gov't Code § 261.401 (requiring state agency that operates, licenses, certifies, or registers facility in which children are located to (1) investigate reports of neglect or abuse and (2) adopt rules, to be approved by the Health and Human Services Commission, for such investigation and resolution). We note that TYC has rules concerning investigations of alleged abuse or neglect, 37 T.A.C. § 93.33, and a response procedure when a child dies, 37 T.A.C. § 99.51.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

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² We note that section 261.201(f) of the Family Code provides that the Department of Protective and Regulatory Services (the "department"), upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

Encl. Submitted documents

cc: Ms. Bobbie Edmonds
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210 West 6th Street, #914
Fort Worth, Texas 76102
(w/o enclosures)